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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996	)	**CC Docket No. 98-78**

COMMENTS OF e.spire COMMUNICATIONS, INC.

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To: The Commission

COMMENTS OF e.spire COMMUNICATIONS, INC.

e.spire Communications, Inc. ("e.spire" or "the Company"),[1] by its attorneys and pursuant to the Commission's Public Notice, DA No. 98-1019 released June 3, 1998, submits these comments in support of the Petition of the Association for Local Telecommunications Services ("ALTS").

Introduction and Summary

e.spire is a competitive local exchange carrier ("CLEC") that provides integrated local voice and data communications services in small and mid-sized metropolitan markets throughout the southern and southwestern United States. Utilizing its own SONET-based networks in 32 markets and 45 data switches installed nationwide, e.spire already is providing its customers with

[1] e.spire formerly was known as American Communications Services, Inc. (ACSI).

advanced telecommunications services. e.spire continues to make enormous investments in digital networks in markets across the country. However, in order to continue the ambitious expansion of local networks and provide xDSL and other advanced technologies, e.spire must be able to interconnect and collocate with ILEC digital and broadband facilities on reasonable terms, as required by Section 251(c) of the Act. As proposed in the ALTS Petition, Commission clarification of CLECs rights under the Act will facilitate the deployment of advanced telecommunications technologies in a timely and efficient fashion in fulfillment of Section 706.[2]

The stated goal of Section 706 of the Telecommunications Act of 1996 ("1996 Act") to encourage universal deployment of "advanced telecommunications capability" is a laudable one. e.spire and other CLECs are deploying billions of dollars of risk capital to deliver just such advanced communications services all across the nation -- in small communities such as Greenville, South Carolina and Montgomery, Alabama as well as large urban centers. e.spire is rolling out advanced services because customers are demanding them, *not* in the hopes of some government concession. However, this prodigious effort could quickly be derailed by precipitous and premature Commission action under Section 706 which has the effect of denying CLECs access to critical data service functionality included in bottleneck incumbent local exchange carrier ("ILEC") ILEC facilities. e.spire submits the best way to expand the availability of advanced services is to facilitate interconnection and unbundling of data networks, *not* by inadvertently creating new data service bottlenecks.

It is imperative that the Commission require full implementation of the interconnection, collocation, unbundling, and resale obligations of Sections 251, 252 and 271 of the Act as they relate to advanced digital and broadband services. The Commission should not allow ILECs to

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[2] Pub. L. 104-104, Title VII, § 706 [hereinafter "*Section 706*"]. *See* 47 U.S.C. § 157 nt.

evade the competitive mandate of the Act either by exempting advanced digital technologies from the requirements of the Act, or by allowing to ILEC alter ego affiliates to move advanced data switches, electronics, and other unbundled network elements ("UNEs") associated with advanced telecommunications services beyond the purview of Sections 251 and 252.

I. SECTION 251(c) INTERCONNECTION, COLLOCATION, UNBUNDLING AND RESALE OBLIGATIONS ARE APPLICABLE TO ILEC DIGITAL AND BROADBAND NETWORKS AND MUST BE IMPLEMENTED FULLY TO ACHIEVE THE GOALS OF SECTION 706

Under Section 706 of the Act, Congress required the FCC and each State commission to "encourage the deployment on a *reasonable and timely basis* of advanced telecommunications capability to all Americans."[3] However, as evidenced by their attempt to evade the Section 251 and 252 obligations as they apply to advanced services and facilities, it is clear that ILECs are bent on frustrating the Section 706 mandate, under which several RBOCs now seek relief. In order to accomplish the goals of Section 706, the Commission must reaffirm that the ILECs' digital and broadband services and facilities are subject to all of the interconnection, collocation, unbundling and resale obligations contained in Sections 251(c), 252, and in the case of RBOCs, 271 of the Act.

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3 *Section 706(a)* (emphasis added).

A. The Commission Should Clarify that Section 251(c) is Applicable to Interconnection For Data Services

Several ILECs contend[4] that frame relay service is not an "exchange service" under Section 251(c), and therefore, they have no duty to provide interconnection pursuant to the terms of that section. However, without the ability to interconnect with the ILECs' existing local data networks and facilities on a nondiscriminatory basis, the widespread deployment of broadband capabilities by CLECs will be significantly delayed. It is axiomatic that the ability to interconnect with competing service providers is as important to the development of data competition as it has been to competition in local voice services. As importantly, the Act simply draws no distinction between voice services and basic data services for purposes of Section 251(c) interconnection, unbundling and resale obligations. The Commission should make clear that Sections 251 and 252 of the Act afford CLECs the right to request interconnection with ILECs for data services in the same manner that the Act provides for interconnection for voice services.

B. CLECs Must Have Unbundled Access to xDSL Functionality Including Unbundled Digital Loops, Subloop Elements and Preordering Functions

e.spire has been aggressively deploying facilities required to provide advanced data services all across the nation. The Company already has installed 45 state-of-the-art data switches and connected them to broadband fiber facilities capable of supporting the most advanced applications yet developed. Yet, as was the case with voice networks, ILEC local access facilities remain a critical, bottleneck "on ramp" to obtain access to these facilities. It simply is not economically feasible for e.spire to replicate the universal ILEC local access

facilities. Thus, unless e.spire can obtain access to data service functionality deployed within the ILEC local access network, e.spire will simply be unable to offer advanced services to the large majority of customers which are not directly connected to the e.spire network.

e.spire agrees with ALTS that xDSL and other data technologies clearly are subject to the unbundling requirements of Sections 251, 252, and 271,[5] and, in light of the untenable position of several RBOCs to the contrary, the Commission should issue a declaratory ruling confirming that ILECs must provide CLECs unbundled access to the following: loops,[6] loop electronics,[7] subloop electronics, [8] and preordering functions that allow CLECs to identify xDSL capable loops. Commission clarification at this point is necessary, particularly in light of ILEC refusals to fully implement the requirements of Sections 251and 252, the mandate contained Section 706 of the Act, and the costs that would unnecessarily be imposed upon CLECs, if the untenable position of the RBOCs were allowed to stand.

e.spire echoes the concern expressed by ALTS regarding the positions taken by ILECs in proceedings throughout the country where ILECs have refused to provide interconnection to xDSL equipment, or offer xDSL functionalities as UNEs at the cost-based pricing standards

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4 SBC, U S West and Ameritech each have refused e.spire's request to negotiate a local interconnection arrangement for frame relay traffic pursuant to Section 251(c).

5 *ALTS Petition* at 14.

6 The Commission should require ILECs to make the following categories of loops available on an unbundled basis: 2-wire analog; 4-wire analog; 2 wire digital; 4 wire digital; loops provided with electronics at cost based rates.

7 The Commission should clarify that ILECs must include the following electronics in the price of unbundled loops: digital loop carrier (universal, integrated, next generation); multiplexers; optical line terminating multiplexers or other optical-electrical converters; xDSL equipment, including remote DSLAMs, DSL line cards used in ISDN or DLC equipment.

8 Subloop electronics should include: DSL, DLC, ISDN, MUX, and OLTM.

required by Sections 251and 252.[9] As ALTS noted, three RBOCs have stated that they will provide CLECs only with conditioned copper wire, rather than provide CLECs access to a circuit that employs xDSL electronics, even if it requires construction of new loop facilities.[10] e.spire concurs with ALTS' assessment: if CLECs are refused permission to interconnect with xDSL equipment, are refused loops with xDSL electronics, and not given access to loops free of load coils or bridge taps, CLECs will effectively be prevented from providing xDSL-based services on a significant number of loops.[11]

C. The Commission Must Establish New Collocation Rules to Ensure Reasonable and Nondiscriminatory Access to ILEC Data Facilities

The Commission must establish new collocation rules in order to ensure that CLECs have reasonable and nondiscriminatory access to ILEC data facilities. Physical collocation of CLEC facilities in ILEC local serving offices ("LSOs") is critical to their ability to interconnect with ILEC facilities required to provide advanced telecommunications services. However, ILECs increasingly are denying CLECs physical collocation due to a lack of space in central offices.[12] Even where space is available, current rules have permitted ILECs to extract huge collocation charges which far exceed the reasonably necessary expenditures. Together these factors are erecting significant barriers to entry into the market for advanced services.

However, a number of innovative solutions are available to address the dearth of physical collocation space. Therefore, e.spire supports the ALTS Petition's request that the Commission establish new collocation rules implementing the following requirements:

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9 *ALTS Petition* at 14-15

10 *Id.* at 15.

11 *Id.* at 16-17.

- Establish that CLECs can use virtual collocation arrangements to combine UNEs.

- Provide for "cageless" collocation that allows CLECs to avoid the cost of constructing enclosures for their collocation space, and allows them to collocate in a total area of less than 10 square feet.

- Provide for enclosed collocation cages of as little as 10 square feet.

- Permit enclosed collocation without cages, such as use of locker arrangements.

- Allow multiple CLECs to share a single collocation cage.

- Allow collocated CLECs to establish cross-connects to cages of other collocated CLECs.

- Eliminate restrictions on CLECs' ability to collocate remote switching modules, xDSL electronics, internet routers and other advanced data equipment.

- Require ILECs' virtual and physical collocation rates to reflect the costing principles of Sections 251-252 of the Act.

- Establish reasonable and nondiscriminatory rules for the allocation of space preparation charges among collocated carriers.

- Establish reasonable and nondiscriminatory deployment intervals for new collocation arrangements, and expansion of existing arrangements.

- As an ongoing practice, incorporate into the Commission's collocation rules the most innovative and effective collocation provisions established by the State commissions.

- Permit walk-throughs and third-party independent verification of ILEC claims of space exhaustion to confirm that ILEC central office space is being efficiently used.

The Commission must also clarify that virtual collocation must be made available to CLECs as a means of connecting UNEs. In the aftermath of the Eighth Circuit's *Iowa Utilities*

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12 Only last month, for example, BellSouth refused to permit e.spire to establish physical collocation in four (4) important LSOs in Atlanta, due to an alleged lack of space, *and*

Board decision, many ILECs have taken the position that CLECs must physically collocate at every point in the ILEC network where two UNEs must be connected. This effectively forecloses the use of virtual collocation as a means of combining UNEs in many instances. As ALTS argues in its Petition, requiring physical collocation at every ILEC end office and tandem in order to accomplish collocation is not only a strained and unreasonable interpretation of the Eight Circuit decision, but it also makes connection of UNEs extremely cost prohibitive.[13] Therefore, e.spire is of the position that virtual collocation must be made available at all points of aggregation along the loop, including the controlled environmental vault or its above-ground equivalent, as well as any other points of aggregation where DLCs, MUXs, OLTMs and DSLs are deployed. Moreover, line cards must be installed in aggregating equipment and CLECs must be able to cross-connect aggregating equipment to distribution or feeder plant. Allowing ILECs to require physical collocation is tantamount to disallowing collocation at all.

In sum, e.spire concurs with ALTS that accomplishment of the purposes of Section 706 requires that the Commission revise its collocation rules to increase available collocation space, broaden the use that may be made of such collocation space, and dramatically reduce the expense of physical collocation.

II. SECTION 251(h) PREVENTS ILECs FROM USING AFFILIATES TO AVOID INTERCONNECTION, UNBUNDLING AND RESALE REQUIREMENTS

In response to the competitive pressures from CLECs, ILECs have announced rollout plans for xDSL and have commenced wide-scale deployment of telecommunications technologies and facilities. Simultaneously, the ILECs have pursued a strategy of shielding their

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denied e.spire's request to conduct a "walk-through" to verify that space is exhausted.

[13] *ALTS Petition* at 18.

newly developed advanced technologies from competition by: (1) seeking regulatory relief from the Commission pursuant to Section 706 that would render their data facilities exempt them from Sections 251 and 252 of the Act; and (2) transferring data switches and UNEs to affiliates, and arguing that they are not subject to the requirements of 251(c).[14] The ILECs cannot have it both ways.

e.spire indicated in its comments in CC Docket No. 98-39 that "Section 251(h) of the Communications Act evinces a clear intent by Congress to foreclose the possibility of ILEC legal and regulatory maneuvering around the obligations imposed by Sections 251 and 252."[15] The Act is technology neutral, and the Commission should not impose a regulatory structure that would afford differing technologies different regulatory treatment, particularly when such technologies are impossibly intertwined, interchangeable and difficult to distinguish. Permitting the transfer of selected data facilities to an ILEC affiliate will simply encourage ILECs to transfer competitively sensitive functionality to the affiliate, and enmesh regulators in endless disputes regarding the proprietary of each such reassignment. Therefore, e.spire agrees with ALTS that the Commission should issue a ruling affirming that the provisions of Sections 251, 252 and 271 are applicable to advanced data networks.

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14 *See, e.g., Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability,* CC Docket No. 98-32 (filed Mar. 5, 1998) (e.spire filed a Consolidated Opposition to Ameritech's Petition and the Section 706 Petitions of Bell Atlantic, CC Docket No. 98-11, and U S West, CC Docket No. 98-26, on Apr. 6, 1998).

15 *See Comments of e.spire Communications, Inc.*, CC Docket No. 98-39 at 2.

III. THE COMMISSION SHOULD PRESERVE AND ENHANCE PRO-COMPETITIVE RULES AND POLICIES ADOPTED BY STATE COMMISSIONS

e.spire agrees with ALTS' contention that the innovative initiatives adopted by State commissions which have fostered prodigious competition and have advanced the deployment of advanced telecommunications capability should be preserved and enhanced.[16] Section 706 states unequivocally that the "Commission and each State commission...shall encourage the deployment" of advanced telecommunications capabilities, and thereby establishes the dual jurisdiction similar to that established in Sections 251, 252 and 271.[17] The Commission, therefore, should not take unilateral action under Section 706 that would diminish or destroy the effect of State actions that have provided CLECs with various combinations of UNEs that have been critical to the deployment of CLEC data services. including State decisions that have resulted in ILECs being required to provide: subloop components upon request; digital unbundled loops; non-discriminatory access to digital equipment and services. e.spire agrees with ALTS that these decisions must be preserved.

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16 *See ALTS Petition* at 36.

17 *Section 706(a).*

Conclusion

For all the foregoing reasons, e.spire requests that the Commission issue a declaratory ruling that the competitive provisions of Sections 251, 252, and 271 of the communications Act apply to the deployment of advanced data networks, and that CLECs have the same rights with respect to access to advanced data networks as they have for plain old telephone service as well as other telecommunications services.

Respectfully submitted,

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